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AMENDED IN ASSEMBLY AUGUST 17, 2015

AMENDED IN ASSEMBLY JULY 1, 2015

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AMENDED IN SENATE JUNE 1, 2015

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AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 119

Introduced by Senator Hill

January 14, 2015

An act to amend Sections 4216, 4216.1, 4216.2, 4216.3, 4216.4, 4216.5, 4216.6, 4216.7, 4216.8, and 4216.9 of, and to add Sections 4216.12, 4216.13, 4216.14, 4216.15, 4216.16, 4216.17, 4216.18, 4216.19, 4216.20, 4216.21, and 4216.22 to, the Government Code, and to amend Section 1702.5 of, and to add Sections ~~320.5~~ 320.5, 911.2, and 971 to, the Public Utilities Code, relating to excavations.

LEGISLATIVE COUNSEL'S DIGEST

SB 119, as amended, Hill. Protection of subsurface installations.

Existing law requires every operator of a subsurface installation, except the Department of Transportation, to become a member of, participate in, and share in the costs of, a regional notification center. Existing law requires any person who plans to conduct any excavation

to contact the appropriate regional notification center before commencing that excavation, as specified. Existing law defines a subsurface installation as any underground pipeline, conduit, duct, wire, or other structure. Existing law requires an operator of a subsurface installation, who receives notification of proposed excavation work, within 2 working days of that notification, excluding weekends and holidays, to mark the approximate location and number of subsurface installations that may be affected by the excavation or to advise that no subsurface installations operated by him or her would be affected. Existing law requires an operator of a subsurface installation that has failed to comply with these provisions to be liable to the excavator for damages, costs, and expenses.

This bill would declare the need to clarify and revise these provisions. The bill would define and redefine various terms relating to a regional notification center. The bill would expand the definition of a subsurface ~~installation~~, *installation* to include an underground structure or submerged duct, pipeline, or structure, except as specified.

The bill would require an excavator planning to conduct an excavation to delineate the area to be excavated before notifying the appropriate regional notification center of the planned excavation, as provided. The bill would require an operator, before the legal start date and time of the excavation, to locate and field mark, within the area delineated for excavation, its subsurface installations. The bill would require an operator to maintain and preserve all plans and records for any subsurface installation owned by that operator as that information becomes known, as specified.

This bill would prohibit an excavator that damages a subsurface installation due to an inaccurate field mark, as defined, by an operator from being liable for damages, replacement costs, or other expenses arising from damage to the subsurface installation, provided that the excavator complied with the provisions described above. The bill would also authorize, in any action for reimbursement or indemnification for a claim arising from damage to a subsurface installation in which a court finds that the excavator complied with those provisions, the excavator to be awarded reasonable attorney's fees and expenses.

The bill would delete the existing exemptions pertaining to an owner of real property and would instead exempt an owner of residential real property who, as part of improving his or her principal residence, is performing, or is having performed, an excavation using hand tools that does not require a permit, as specified.

The bill would also require the Public Utilities Commission and the Office of the State Fire Marshal to enforce the requirement to locate and field mark subsurface installations and lines against operators of natural gas and electric underground infrastructure and hazardous liquid pipelines, unless these operators are municipal utilities.

~~This bill~~ *bill, if specified funds are appropriated by the Legislature and authority to hire sufficient staff is granted to the Contractors' State License Board, would create the California Underground Facilities Safe Excavation Advisory Committee under, and assisted by the staff of, the Contractors' State License Board, in the Department of Consumer Affairs. The bill would require the committee to coordinate education and outreach activities, develop standards, and investigate violations of the provisions described above, as specified. The bill would also require the advisory committee, by December 31, 2017, and in consultation with the Department of Food and Agriculture, to make recommendations, informed by a specified study, that addresses the long term treatment of agricultural activities in relation to subsurface excavation, and whether those provisions are appropriate or could be modified in ways to promote participation in safe agricultural practices around high priority subsurface installations, as specified.*

The advisory committee would be composed of 9 members who would serve 2-year terms, and one nonvoting ex officio member who may be invited by the appointed members of the committee. The bill would authorize the advisory committee, commencing on January 1, 2017, to use compliance audits in furthering the purposes of these provisions. The bill would require the advisory committee to conduct an annual meeting on or before February 1, 2017, and each year thereafter, to report to the Governor and the Legislature on its activities and any recommendations.

The bill would create the Safe Energy Infrastructure and Excavation Fund in the State Treasury and would provide that moneys deposited into the fund are to be used to cover the administrative expenses of the advisory committee, upon appropriation by the Legislature. The bill would authorize the commission to use excess moneys in the fund for specified purposes relating to the safety of underground utilities, upon appropriation by the Legislature.

The Natural Gas Pipeline Safety Act of 2011, within the Public Utilities Act, designates the Public Utilities Commission as the state authority responsible for regulating and enforcing intrastate gas pipeline transportation and pipeline facilities pursuant to federal law, including

the development, submission, and administration of a state pipeline safety program certification for natural gas. Existing federal law requires each operator of a buried gas pipeline to carry out a program to prevent damage to that pipeline from excavation activities, as specified.

The bill would require *the Public Utilities Commission, no later than February 1, 2019, to report to the Legislature and to the California Underground Facilities Safe Excavation Advisory Committee an analysis of excavation damage to commission-regulated pipeline facilities. The bill would also require each gas corporation, as part of its damage prevention program, to collect ~~specified~~ certain information until January 1, 2020, to inform its outreach ~~activities~~ activities, and to report this information annually until January 1, 2020, to the Public Utilities Commission, Commission and the California Underground Facilities Safe Excavation Advisory Committee, as specified. The bill would also require the each gas corporation to estimate Californians' use of regional notification centers, as specified, and to provide this estimate to the commission and the advisory committee on or before July 1, 2016.*

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the requirements described above are within the act, a violation of these requirements would impose a state-mandated local program by creating a new crime.

Existing law requires the Public Utilities Commission to develop and implement a safety enforcement program that is applicable to gas corporations and electrical corporations and that includes procedures for monitoring, data tracking and analysis, and investigations, as well as issuance of citations by commission staff, under the direction of the executive director of the commission, for correction and punishment of safety violations. That law requires the commission to develop and implement an appeals process to govern issuance and appeal of citations, or resolution of corrective action orders. That law requires the commission to implement the safety enforcement program for gas safety by July 1, 2014, and for electrical safety by January 1, 2015.

This bill would require that moneys collected as a result of the issuance of citations to gas corporations and electrical corporations pursuant to the above-described law be deposited in the Safe Energy Infrastructure and Excavation Fund.

The bill would make other conforming changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) For the state’s “one-call” law to be effective, it needs greater
4 clarity and effective enforcement, and it must foster communication
5 between operators of subsurface installations and the various types
6 of excavators in California.

7 (b) Regional notification centers, or “one-call” centers, have
8 developed means of electronic communication that improve the
9 efficiency of the “one-call” process, and statutory barriers to using
10 new methods of notification should be eliminated.

11 (c) Electronic positive response is a means to communicate the
12 status of responses to an excavator’s notice of excavation via the
13 one-call center and provides the safety benefit that an excavator
14 has an easy means to know whether or not all of the utilities within
15 the excavation area have marked their subsurface installations.

16 (d) The delineation by an excavator of the area to be excavated
17 in advance of the field location and marking by subsurface facility
18 operators of their installations aids the excavator in understanding
19 where subsurface installations were marked, and thus improves
20 safety. This practice was recommended by the National
21 Transportation Safety Board in its 1997 study “Protecting Public
22 Safety through Excavation Damage Prevention” and is a best
23 practice of the Common Ground Alliance.

24 (e) Continuing an excavation after an excavation “ticket” has
25 expired does not promote safety, and excavators should renew
26 their ticket with the one-call center before expiration. Continuing
27 excavation when markings are no longer visible does not promote
28 safety, and excavators should stop work until the subsurface
29 installations are remarked.

1 (f) Increased communication between subsurface installation
2 operators and excavators before breaking ground has safety
3 benefits.

4 (g) Construction sites often have many parties conducting
5 different, ongoing work, and so the inherent safety risks associated
6 with that work can be increased by a failure of these parties to
7 effectively communicate. Excavators, operators of subsurface
8 installations, and locators have a responsibility to communicate
9 with other parties before entering these worksites, which may
10 require advance schedule coordination, and also have a
11 responsibility to observe the safety requirements set for those
12 worksites.

13 (h) Abandoned subsurface installations can be mistaken for
14 active subsurface installations that are marked, and thus present a
15 safety risk to excavators and the public. Safety will be improved
16 if subsurface facility operators identify these subsurface
17 installations when their existence is known.

18 (i) The ability of an operator of subsurface installations to locate
19 and mark affected installations can be seriously impaired by a lack
20 of high-quality records of those installations, and thus operators
21 should keep records of their facilities for as long as they are in the
22 ground, whether or not they are in use.

23 (j) Failure by an operator of subsurface installations to mark
24 the installations within the required two-working-day period is a
25 serious breach of duty.

26 (k) While an operator has two working days after an excavator's
27 call to the one-call center to mark its subsurface installations,
28 failure of that operator to do so does not relieve the excavator of
29 the safety responsibility to wait until the operator has marked
30 before commencing excavation.

31 (l) Mismarks by an operator place excavators and the public at
32 great safety risk, and so operators who mismark their installations
33 are entitled to no award for any damages to those installations.

34 (m) Installations that are embedded in pavement require more
35 extensive communication among operators, locators, and
36 excavators to prevent the installations from being damaged.

37 (n) Exemptions that allow a class of persons to excavate without
38 calling 811 are to be permitted only if alternative procedures allow
39 the excavation to take place without compromising safety.

1 (o) More communication is needed between the Department of
2 Transportation and the regional notification centers, including the
3 sharing of subsurface installation location information, so that
4 excavators may be alerted of possible Department of Transportation
5 subsurface installations in the area of planned excavation and, if
6 the excavation is to take place in a Department of Transportation
7 right-of-way, the need to seek a Department of Transportation
8 encroachment permit.

9 (p) Insufficient information exists on how to best achieve safety
10 when conducting agricultural activities around subsurface
11 ~~installations~~. *installations, and a study, informed by data collected*
12 *about damages in agricultural areas is needed to determine*
13 *effective and appropriate safety measures.*

14 (q) Prevention of boring through sewer laterals with natural gas
15 and other subsurface installation services may be achieved through
16 reasonable care in the use of trenchless excavating technologies.
17 Indication of the location of sewer laterals can aid in prevention
18 of these cross-bores.

19 (r) The exemption that permits private property owners to dig
20 on their property without calling a regional notification center to
21 have the area marked for subsurface installations does not have a
22 basis in safety.

23 (s) The exemption that permits homeowners to conduct
24 excavation on their property with heavy machinery or when there
25 is a utility easement on his or her property does not have a basis
26 in safety.

27 (t) Behaviors that are suspected to be unsafe, but upon which
28 there is not widespread agreement as to the level of risk and,
29 therefore, are unregulated, must be monitored to better assess the
30 risk.

31 (u) The Study on the Impact of Excavation Damage on Pipeline
32 Safety, submitted by the United States Department of
33 Transportation to Congress on October 9, 2014, reported that other
34 states have found that exemption of landscape maintenance
35 activities of less than 12 inches deep, when performed with hand
36 tools, does not appear to have a significant impact on safety. The
37 report cautions, however, that while those activity-based
38 exemptions may be acceptable, they should be supported by
39 sufficient data.

(v) Insufficient data exists on the safety risks of the installation of temporary real estate signposts; therefore, it is important that natural gas distribution companies collect information on whether damages are caused by these signposts.

(w) Gas corporations have ready access to information about damages that occur on their subsurface installations and should collect relevant data to inform future discussions regarding the risk of notification exemptions.

(x) Other states have experienced a dramatic improvement in safety after implementing centralized administrative oversight of one-call laws.

(y) California should have an advisory committee, composed of excavation stakeholders, subject to oversight by the Legislature and the Department of Finance, to perform three major tasks, which are to coordinate the diverse education and outreach efforts undertaken by state and local agencies, operators, and excavators throughout the state and issue grants for targeted efforts, to study excavation questions and develop standards that clarify best practices, and to investigate potential violations of the one-call law that inform both the standards it is to develop and potential enforcement actions. Due to the size of the state, and in order to reduce costs, the advisory committee should meet in northern and southern California.

(z) The advisory committee should not be funded through the General Fund, but should be funded through fines levied on gas and electric corporations for safety violations, instead of having those fines go to the General Fund.

SEC. 2. Section 4216 of the Government Code is amended to read:

4216. As used in this article the following definitions apply:

(a) “Abandoned subsurface installation” means a subsurface installation that is no longer in service and is physically disconnected from any active or inactive subsurface installation.

(b) “Active subsurface installation” means a subsurface installation currently in use or currently carrying service.

(c) “Advisory Committee” means the California Underground Facilities Safe Excavation Advisory Committee.

(d) “Delineate” means to mark in white the location or path of the proposed excavation using the guidelines in Appendix B of the “Guidelines for Excavation Delineation” published in ~~Best~~

~~Practices Version 11.0~~ by the most recent version of the *Best Practices guide* of the Common Ground Alliance. If there is a conflict between the marking practices in those guidelines and other provisions of this article, this article shall control. “Delineation” also includes physical identification of the area to be excavated using pink marking, if an excavator makes a determination that standard delineation may be misleading to those persons using affected streets and highways, or be misinterpreted as a traffic or pedestrian control, and the excavator has contacted the regional notification center to advise the operators that the excavator will physically identify the area to be excavated using pink markings.

(e) “Electronic positive response” means an electronic response from an operator to the regional notification center providing the status of an operator’s statutorily required response to a ticket.

(f) (1) “Emergency” means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.

(2) “Unexpected occurrence” includes, but is not limited to, a fire, flood, earthquake or other soil or geologic movement, riot, accident, damage to a subsurface installation requiring immediate repair, or sabotage.

(g) (1) “Excavation” means any operation in which earth, rock, pavement, or other material in the ground is moved, removed, or otherwise displaced by means of tools, equipment, or explosives in any of the following ways: grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing and driving, gouging, crushing, jack hammering, saw cutting, or any other way.

(2) For purposes of this article, “excavation” does not include any of the following:

(A) Landscape maintenance activity that is performed with hand tools at a depth of no more than 12 inches. Landscape maintenance activity includes all of the following:

(i) Aeration, dethatching, and cutting of vegetation, including lawn edging.

(ii) Installation or replacement of ground cover and plant life.

(iii) Minor fixes to existing drainage and sprinkler systems.

1 (B) Operator maintenance activities that are performed with
2 hand tools around an operator's facilities that traverse from above
3 the ground to below ground in areas known, or reasonably believed,
4 to contain only the operator's facilities. Operator maintenance
5 activities include all of the following:

6 (i) Clearing soil, debris, or vegetation from around or inside
7 vaults, casings, and other in-ground structures that house an
8 operator's facilities.

9 (ii) Moving, removing, or displacing soil for the specific purpose
10 of mitigating or preventing corrosion to pipeline facilities such as
11 gas meters, risers, pipes, and valves located above ground or inside
12 vaults, casings, and other in-ground structures.

13 (iii) Replacing or repairing an operator's facilities located above
14 ground or inside vaults, casings, and other in-ground structures.

15 (iv) Repairing or replacing vaults, casings, and other in-ground
16 structures that house an operator's facilities.

17 (C) Subparagraph (A) shall become inoperative on January 1,
18 2020.

19 (3) The exclusion of the activities in paragraph (2) from the
20 definition of "excavation" shall not be used to discourage a person
21 planning to perform those activities from voluntarily notifying a
22 regional notification center pursuant to Section 4216.2, and does
23 not relieve an operator of a subsurface installation from the
24 obligation to locate and field mark pursuant to Section 4216.3
25 following the notification. The exclusion of activities in paragraph
26 (2) does not relieve a person performing those activities from a
27 duty of reasonable care to prevent damage to subsurface
28 installations, and failure to exercise reasonable care may result in
29 liability for damage to a subsurface installation that is proximately
30 caused by those activities.

31 (h) Except as provided in Section 4216.8, "excavator" means
32 any person, firm, contractor or subcontractor, owner, operator,
33 utility, association, corporation, partnership, business trust, public
34 agency, or other entity that, with his, her, or its own employees or
35 equipment, performs any excavation.

36 (i) "Hand tool" means a piece of equipment used for excavating
37 that uses human power and is not powered by any motor, engine,
38 hydraulic, or pneumatic device.

39 (j) "High priority subsurface installation" means high-pressure
40 natural gas pipelines with normal operating pressures greater than

1 415kPA gauge (60psig), petroleum pipelines, pressurized sewage
2 pipelines, high-voltage electric supply lines, conductors, or cables
3 that have a potential to ground of greater than or equal to 60kv, or
4 hazardous materials pipelines that are potentially hazardous to
5 workers or the public if damaged.

6 (k) “Inactive subsurface installation” means both of the
7 following:

8 (1) The portion of an underground subsurface installation that
9 is not in use but is still connected to the subsurface installation, or
10 to any other subsurface installation, that is in use or still carries
11 service.

12 (2) A new underground subsurface installation that has not been
13 connected to any portion of an existing subsurface installation.

14 (l) “Legal excavation start date and time” means at least two
15 working days, not including the date of notification, or up to 14
16 calendar days from the date of notification, if so specified by the
17 excavator.

18 (m) “Local agency” means a city, county, city and county,
19 school district, or special district.

20 (n) (1) “Locate and field mark” means to indicate the existence
21 of any owned or maintained subsurface installations by using the
22 guidelines in Appendix B of the “Guidelines for Operator Facility
23 Field Delineation” published in ~~Best Practices Version 11.0 by the~~
24 *most recent version of the Best Practices guide of the Common*
25 *Ground Alliance* and in conformance with the uniform color code
26 of the American Public Works Association. If there is a conflict
27 between the marking practices in the guidelines and this article,
28 this article shall control.

29 (2) “Locate and field mark” does not require an indication of
30 the depth.

31 (o) “Near miss” means an event in which damage did not occur,
32 but a clear potential for damage was identified.

33 (p) “Operator” means any person, corporation, partnership,
34 business trust, public agency, or other entity that owns, operates,
35 or maintains a subsurface installation. For purposes of Section
36 4216.1, an “operator” does not include an owner of real property
37 where subsurface installations are exclusively located if they are
38 used exclusively to furnish services on that property and the
39 subsurface facilities are under the operation and control of that
40 owner.

(q) “Pavement” means a manmade surface material that cannot be removed with a conventional hand tool.

(r) “Positive response” means the response from an operator directly to the excavator providing the status of an operator’s statutorily required response to a ticket.

(s) “Qualified person” means a person who completes a training program in accordance with the requirements of Section 1509 of Title 8 of the California Code of Regulations, Injury and Illness Prevention Program, that meets the minimum locators training guidelines and practices published in ~~Best Practices Version 11.0~~ *by the most recent version of the Best Practices guide of the Common Ground Alliance.*

(t) “Regional notification center” means a nonprofit association or other organization of operators of subsurface installations that provides advance warning of excavations or other work close to existing subsurface installations, for the purpose of protecting those installations from damage, removal, relocation, or repair.

(u) “State agency” means every state agency, department, division, bureau, board, or commission.

(v) “Subsurface installation” means any underground or submerged duct, pipeline, or structure, including, but not limited to, a conduit, duct, line, pipe, wire, or other structure, except nonpressurized sewerlines, nonpressurized storm drains, or other nonpressurized drain lines.

(w) “Ticket” means an excavation location request issued a number by the regional notification center.

(x) “Tolerance zone” means 24 inches on each side of the field marking placed by the operator in one of the following ways:

(1) Twenty-four inches from each side of a single marking, assumed to be the centerline of the subsurface installation.

(2) Twenty-four inches plus one-half the specified size on each side of a single marking with the size of installation specified.

(3) Twenty-four inches from each outside marking that graphically shows the width of the outside surface of the subsurface installation on a horizontal plane.

(y) “Working day” for the purposes of determining excavation start date and time means a weekday Monday through Friday, from 7:00 a.m. to 5:00 p.m., except for federal holidays and state holidays, as defined in ~~Section 19853 of the Government Code.~~

1 19853, or as otherwise posted on the Internet Web site of the
2 regional notification center.

3 SEC. 3. Section 4216.1 of the Government Code is amended
4 to read:

5 4216.1. Every operator of a subsurface installation, except the
6 Department of Transportation, shall become a member of,
7 participate in, and share in the costs of, a regional notification
8 center. Operators of subsurface installations who are members of,
9 participate in, and share in, the costs of a regional notification
10 center, including, but not limited to, the Underground Service
11 Alert—Northern California or the Underground Service
12 Alert—Southern California are in compliance with this section
13 and Section 4216.9.

14 SEC. 4. Section 4216.2 of the Government Code is amended
15 to read:

16 4216.2. (a) Before notifying the appropriate regional
17 notification center, an excavator planning to conduct an excavation
18 shall delineate the area to be excavated. If the area is not delineated,
19 an operator may, at the operator's discretion, choose not to locate
20 and field mark until the area to be excavated has been delineated.

21 (b) Except in an emergency, an excavator planning to conduct
22 an excavation shall notify the appropriate regional notification
23 center of the excavator's intent to excavate at least two working
24 days, and not more than 14 calendar days, before beginning that
25 excavation. The date of the notification shall not count as part of
26 the two-working-day notice. If an excavator gives less notice than
27 the legal excavation start date and time and the excavation is not
28 an emergency, the regional notification center will take the
29 information and provide a ticket, but an operator has until the legal
30 excavation start date and time to respond.

31 (c) When the excavation is proposed within 10 feet of a high
32 priority subsurface installation, the operator of the high priority
33 subsurface installation shall notify the excavator of the existence
34 of the high priority subsurface installation prior to the legal
35 excavation start date and time, and set up an onsite meeting at a
36 mutually agreed upon time to determine actions or activities
37 required to verify the location and prevent damage to the high
38 priority subsurface installation. The excavator shall not begin
39 excavating until after the completion of the onsite meeting.

(d) Except in an emergency, every excavator covered by Section 4216.8 planning to conduct an excavation on private property that does not require an excavation permit may contact the appropriate regional notification center if the private property is known, or reasonably should be known, to contain a subsurface installation other than the underground facility owned or operated by the excavator. Before notifying the appropriate regional notification center, an excavator shall delineate the area to be excavated. Any temporary marking placed at the planned excavation location shall be clearly seen, functional, and considerate to surface aesthetics and the local community. An excavator shall check if any local ordinances apply to the placement of temporary markings.

(e) If an excavator gives less than the legal excavation start date and time and it is not an emergency, the regional notification center shall take the information and provide a ticket but an operator shall have until the legal excavation start date and time to respond.

(f) The regional notification center shall provide a ticket to the person who contacts the center pursuant to this section and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation. A ticket shall be valid for 28 days from the date of issuance. If work continues beyond 28 days, the excavator shall update the ticket either by accessing the center's Internet Web site or by calling "811" by the end of the 28th day.

(g) A record of all notifications by an excavator or operator to the regional notification center shall be maintained for a period of not less than three years. The record shall be available for inspection by the excavator and any member, or their representative, during normal working hours and according to guidelines for inspection as may be established by the regional notification centers.

(h) Unless an emergency exists, an excavator shall not begin excavation until the excavator receives a positive response from all known subsurface installations within the delineated boundaries of the proposed area of excavation.

(i) If a site requires special access, an excavator shall request an operator to contact the excavator regarding that special access or give special instructions on the location request.

(j) If a ticket obtained by an excavator expires but work is ongoing, the excavator shall call into the regional notification

center and get a new ticket and wait a minimum of two working days, not including the date of call in, before restarting excavation. All excavation shall cease during the waiting period.

SEC. 5. Section 4216.3 of the Government Code is amended to read:

4216.3. (a) (1) (A) Unless the excavator and operator mutually agree to a later start date and time, or otherwise agree to the sequence and timeframe in which the operator will locate and field mark, an operator shall do one of the following before the legal excavation start date and time:

(i) Locate and field mark within the area delineated for excavation and, where multiple subsurface installations of the same type are known to exist together, mark the number of subsurface installations.

(ii) To the extent and degree of accuracy that the information is available, provide information to an excavator where the operator's active or inactive subsurface installations are located.

(iii) Advise the excavator it operates no subsurface installations in the area delineated for excavation.

(B) An operator shall mark newly installed subsurface installations in areas with continuing excavation activity.

(C) An operator shall indicate with an "A" inside a circle the presence of any abandoned subsurface installations, if known, within the delineated area. The markings are to make an excavator aware that there are abandoned subsurface installations within that delineated work area.

(2) Only a qualified person shall perform subsurface installation locating activities.

(3) A qualified person performing subsurface installation locating activities on behalf of an operator shall use a minimum of a single-frequency utility locating device and shall have access to alternative sources for verification, if necessary.

(4) An operator shall amend, update, maintain, and preserve all plans and records for its subsurface installations as that information becomes known. If there is a change in ownership of a subsurface installation, the records shall be turned over to the new operator. Commencing January 1, 2016, records on abandoned subsurface installations, to the extent that those records exist, shall be retained.

(b) If the field marks are no longer reasonably visible, an excavator shall renotify the regional notification center with a

request for remarks that can be for all or a portion of the excavation. Excavation shall cease in the area to be remarked. If the area to be remarked is not the full extent of the original excavation, the excavator shall delineate the portion to be remarked. If the delineation markings are no longer reasonably visible, the excavator shall redelineate the area to be remarked. If remarks are requested, the operator shall have two working days, not including the date of request, to remark the subsurface installation. Excavation shall cease in the area where the remarks are requested. If the area to be remarked is not the full extent of the original excavation, the excavator shall delineate the portion to be remarked and provide a description of the area requested to be remarked on the ticket. The excavator shall provide a description for the area to be remarked that falls within the area of the original location request.

(c) Every operator may supply an electronic positive response through the regional notification center before the legal excavation start date and time. The regional notification center shall make those responses available.

(d) The excavator shall notify the appropriate regional notification center of the failure of an operator to identify subsurface installations pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (a), or subdivision (b). The notification shall include the ticket issued by the regional notification center. A record of all notifications received pursuant to this subdivision shall be maintained by the regional notification center for a period of not less than three years. The record shall be available for inspection pursuant to subdivision (h) of Section 4216.2.

(e) If an operator or local agency knows that it has a subsurface installation embedded or partially embedded in the pavement that is not visible from the surface, the operator or local agency shall contact the excavator before pavement removal to communicate and determine a plan of action to protect that subsurface installation and excavator.

SEC. 6. Section 4216.4 of the Government Code is amended to read:

4216.4. (a) (1) Except as provided in paragraph (2), if an excavation is within the approximate location of a subsurface installation, the excavator shall determine the exact location of the subsurface installations within the tolerance zone using hand tools

1 before using any power-driven excavation or boring equipment
2 within the tolerance zone of the subsurface installations. In all
3 cases the excavator shall use reasonable care to prevent damaging
4 subsurface installations.

5 (2) (A) An excavator may use a vacuum excavation device to
6 expose subsurface installations within the tolerance zone if the
7 operator has marked the subsurface installation, the excavator has
8 contacted any operator whose subsurface installations may be in
9 conflict with the excavation, and the operator has agreed to the
10 use of a vacuum excavation device. An excavator shall inform the
11 regional notification center of his or her intent to use a vacuum
12 excavation device when obtaining a ticket.

13 (B) An excavator may use power-operated or boring equipment
14 for the removal of any existing pavement only if there is no known
15 subsurface installation contained in the pavement.

16 (3) An excavator shall presume all subsurface installations to
17 be active, and shall use the same care around subsurface
18 installations that may be inactive as the excavator would use around
19 active subsurface installations.

20 (b) If the exact location of the subsurface installation cannot be
21 determined by hand excavating in accordance with subdivision
22 (a), the excavator shall request the operator to provide additional
23 information to the excavator, to the extent that information is
24 available to the operator, to enable the excavator to determine the
25 exact location of the installation. If the excavator has questions
26 about the markings that an operator has placed, the excavator may
27 contact the notification center to send a request to have the operator
28 contact the excavator directly. The regional notification center
29 shall provide the excavator with the contact telephone number of
30 the subsurface installation operator.

31 (c) An excavator discovering or causing damage to a subsurface
32 installation, including all breaks, leaks, nicks, dents, gouges,
33 grooves, or other damage to subsurface installation lines, conduits,
34 coatings, or cathodic protection, shall immediately notify the
35 subsurface installation operator. The excavator may contact the
36 regional notification center to obtain the contact information of
37 the subsurface installation operator. If high priority subsurface
38 installations are damaged and the operator cannot be contacted
39 immediately, the excavator shall call 911 emergency services.

(d) Each excavator, operator, or locator shall communicate with each other and respect the appropriate safety requirements and ongoing activities of the other parties, if known, at an excavation site.

SEC. 7. Section 4216.5 of the Government Code is amended to read:

4216.5. The requirements of this article apply to state agencies and to local agencies that own or operate subsurface installations, except as otherwise provided in Section 4216.1. A local agency that is required to provide the services described in Section 4216.3 may charge a fee in an amount sufficient to cover the cost of providing that service.

SEC. 8. Section 4216.6 of the Government Code is amended to read:

4216.6. (a) (1) Any operator or excavator who negligently violates this article is subject to a civil penalty in an amount not to exceed ten thousand dollars (\$10,000).

(2) Any operator or excavator who knowingly and willfully violates any of the provisions of this article is subject to a civil penalty in an amount not to exceed fifty thousand dollars (\$50,000).

(3) Except as otherwise specifically provided in this article, this section is not intended to affect any civil remedies otherwise provided by law for personal injury or for property damage, including any damage to subsurface installations, nor is this section intended to create any new civil remedies for those injuries or that damage.

(4) This article shall not be construed to limit any other provision of law granting governmental immunity to state or local agencies or to impose any liability or duty of care not otherwise imposed by law upon any state or local agency.

(b) An action may be brought by the Attorney General, the district attorney, or the local or state agency that issued the permit to excavate, for the enforcement of the civil penalty pursuant to this section either in a civil action brought in the name of the people of the State of California. If penalties are collected as a result of a civil suit brought by a state or local agency for collection of those civil penalties, the penalties imposed shall be paid to the general fund of the agency. If more than one agency is involved in enforcement, the penalties imposed shall be apportioned among them by the court in a manner that will fairly offset the relative

1 costs incurred by the state or local agencies, or both, in collecting
2 these fees.

3 (c) The requirements of this article may also be enforced
4 following a recommendation of the California Underground
5 Facilities Safe Excavation Advisory Committee by a state or local
6 agency, which may include the Attorney General or a district
7 attorney, with jurisdiction over the activity or business undertaken
8 in commission of the violation. The following agencies shall act
9 to accept, amend, or reject the recommendations of the advisory
10 committee as follows:

11 (1) The Registrar of Contractors of the Contractors' State
12 License Board shall enforce the provisions of this article on
13 contractors, as defined in Article 2 of Chapter 9 of Division 3 of
14 the Business and Professions Code.

15 (2) The Public Utilities Commission shall enforce the provisions
16 of this article on gas corporations, as defined in Section 222 of the
17 Public Utilities Code, and electrical corporations, as defined in
18 Section 218 of the Public Utilities Code.

19 (3) The Office of the State Fire Marshal shall enforce the
20 provisions of this article on operators of hazardous liquid pipeline
21 facilities, as defined in Section 60101 of Chapter 601 of Subtitle
22 VIII of Title 49 of the United States Code.

23 (d) Statewide information provided by operators and excavators
24 regarding facility events shall be compiled and made available in
25 an annual report by regional notification centers and posted on the
26 Internet Web sites of the regional notification centers.

27 (e) For purposes of subdivision (d), the following terms have
28 the following meanings:

29 (1) "Facility event" means the occurrence of excavator
30 downtime, damages, near misses, and violations.

31 (2) "Statewide information" means information submitted by
32 operators and excavators using the California Regional Common
33 Ground Alliance's Virtual Private Damage Information Reporting
34 Tool. Supplied data shall comply with the Damage Information
35 Reporting Tool's minimum essential information as listed in ~~Best
36 Practices Version 11.0~~ *by the most recent version of the Best
37 Practices guide* of the Common Ground Alliance.

38 SEC. 9. Section 4216.7 of the Government Code is amended
39 to read:

1 4216.7. (a) If a subsurface installation is damaged by an
2 excavator as a result of failing to comply with Section 4216.2 or
3 4216.4, or subdivision (b) of Section 4216.3, or as a result of failing
4 to comply with the operator's requests to protect the subsurface
5 installation as specified by the operator before the start of
6 excavation, the excavator shall be liable to the operator of the
7 subsurface installation for resulting damages, costs, and expenses
8 to the extent the damages, costs, and expenses were proximately
9 caused by the excavator's failure to comply.

10 (b) If an operator has failed to become a member of, participate
11 in, or share in the costs of, a regional notification center, that
12 operator shall forfeit his or her claim for damages to his or her
13 subsurface installation arising from an excavation against an
14 excavator who has complied with this article to the extent damages
15 were proximately caused by the operator's failure to comply with
16 this article.

17 (c) If an operator of a subsurface installation has failed to
18 comply with the provisions of Section 4216.3, including, but not
19 limited to, the requirement to field mark the appropriate location
20 of subsurface installations within two working days of notification,
21 has failed to comply with paragraph (2) of subdivision (a) of
22 Section 4216.2, or has failed to comply with subdivision (b) of
23 Section 4216.4, the operator shall be liable to the excavator who
24 has complied with Sections 4216.2 and 4216.4 for damages,
25 including liquidated damages, liability, losses, costs, and expenses
26 resulting from the operator's failure to comply with these specified
27 requirements to the extent the damages, costs, and expenses were
28 proximately caused by the operator's failure to comply.

29 (d) An excavator who damages a subsurface installation due to
30 an inaccurate field mark by an operator, or by a third party under
31 contract to perform field marking for the operator, shall not be
32 liable for damages, replacement costs, or other expenses arising
33 from damages to the subsurface installation if the excavator
34 complied with Sections 4216.2 and 4216.4.

35 This section is not intended to create any presumption or to affect
36 the burden of proof in any action for personal injuries or property
37 damage, other than damage to the subsurface installation, nor is
38 this section intended to affect, create, or eliminate any remedy for
39 personal injury or property damage, other than damage to the
40 subsurface installation.

1 (e) In any actions for reimbursement or indemnification for a
2 claim arising from damage to a subsurface installation in which a
3 court finds that the excavator complied with the requirements of
4 this article, the excavator may be awarded reasonable attorney's
5 fees and expenses.

6 (f) For the purposes of this section, "inaccurate field mark"
7 means a mark, or set of markings, made pursuant to Section 4216.3,
8 that did not correctly indicate the approximate location of a
9 subsurface installation affected by an excavation and includes the
10 actual physical location of a subsurface installation affected by an
11 excavation that should have been marked pursuant to Section
12 4216.3 but was not.

13 (g) Nothing in this section shall be construed to do any of the
14 following:

15 (1) Affect claims including, but not limited to, third-party claims
16 brought against the excavator or operator by other parties for
17 damages arising from the excavation.

18 (2) Exempt the excavator or operator from his or her duty to
19 mitigate any damages as required by common or other applicable
20 law.

21 (3) Exempt the excavator or operator from liability to each other
22 or third parties based on equitable indemnity or comparative or
23 contributory negligence.

24 SEC. 10. Section 4216.8 of the Government Code is amended
25 to read:

26 4216.8. This article does not apply to either of the following
27 persons:

28 (a) An owner of residential real property, not engaged as a
29 contractor or subcontractor licensed pursuant to Article 5
30 (commencing with Section 7065) of Chapter 9 of Division 3 of
31 the Business and Professions Code, who, as part of improving his
32 or her principal residence or an appurtenance thereto, is performing
33 or is having an excavation performed using hand tools, including
34 the ~~installations~~ *installation* of temporary real estate signposts,
35 that does not require a permit issued by a state or local agency. A
36 person described in this subdivision is not an "excavator" as
37 defined in subdivision (h) of Section 4216, however this
38 subdivision shall not discourage a person from voluntarily notifying
39 a regional notification center pursuant to Section 4216.2, and does
40 not relieve an operator of a subsurface facility from the obligation

1 to locate and field mark pursuant to Section 4216.3 following the
2 notification. Notwithstanding Section 4216.2, an owner of real
3 residential property is not required to wait until 14 calendar days
4 before the beginning of an excavation to notify the regional
5 notification center, but rather may do so at any time to learn the
6 locations of subsurface installations on his or her property. This
7 subdivision does not relieve a person performing excavation
8 activities from a duty of reasonable care to prevent damage to
9 subsurface installations, and failure to exercise reasonable care
10 may result in liability for damage to a subsurface installation that
11 is proximately caused by those activities.

12 (b) Any person or private entity that leases or rents power
13 operated or power-driven excavating or boring equipment,
14 regardless of whether an equipment operator is provided for that
15 piece of equipment or not, to a contractor or subcontractor licensed
16 pursuant to Article 5 (commencing with Section 7065) of Chapter
17 9 of Division 3 of the Business and Professions Code, if the signed
18 rental agreement between the person or private entity and the
19 contractor or subcontractor contains the following provision:

20
21 “It is the sole responsibility of the lessee or renter to follow
22 the requirements of the regional notification center law
23 pursuant to Article 2 (commencing with Section 4216) of
24 Chapter 3.1 of Division 5 of Title 1 of the Government Code.
25 By signing this contract, the lessee or renter accepts all
26 liabilities and responsibilities contained in the regional
27 notification center law.”

28
29 SEC. 11. Section 4216.9 of the Government Code is amended
30 to read:

31 4216.9. (a) A permit to excavate issued by any local agency,
32 as defined in Section 4216, or any state agency, shall not be valid
33 unless the applicant has been provided an initial ticket by a regional
34 notification center pursuant to Section 4216.2. For purposes of
35 this section, “state agency” means every state agency, department,
36 division, bureau, board, or commission, including the Department
37 of Transportation.

38 (b) This article does not exempt any person or corporation from
39 Sections 7951, 7952, and 7953 of the Public Utilities Code.

1 SEC. 12. Section 4216.12 is added to the Government Code,
2 to read:

3 4216.12. (a) The California Underground Facilities Safe
4 Excavation Advisory Committee is hereby created under, and shall
5 be assisted by the staff of, the Contractors' State License Board
6 in the Department of Consumer Affairs.

7 (b) The advisory committee shall perform the following tasks:

8 (1) Coordinate education and outreach activities that encourage
9 safe excavation practices, as described in Section 4216.17.

10 (2) Develop standards, as described in Section 4216.18.

11 (3) Investigate possible violations of this article, as described
12 in Section 4216.19.

13 (c) Notwithstanding any other law, the repeal of this section
14 renders the advisory committee subject to review by the appropriate
15 policy committees of the Legislature.

16 (d) This section shall remain in effect so long as, pursuant to
17 subdivision (c) of Section 7000.5 of the Business and Professions
18 Code, there is in the Department of Consumer Affairs a
19 Contractors' State License Board.

20 (e) *This section shall become operative only if the Legislature*
21 *appropriates moneys from the Safe Energy Infrastructure and*
22 *Excavation Fund to the California Underground Facilities Safe*
23 *Excavation Advisory Committee for the purposes of this section*
24 *and grants authority to the Contractors' State License Board to*
25 *hire sufficient staff.*

26 SEC. 13. Section 4216.13 is added to the Government Code,
27 to read:

28 4216.13. (a) The advisory committee shall be composed of
29 nine members, of which four shall be appointed by the Governor,
30 three shall be appointed by the Contractors' State License Board,
31 one shall be appointed by the Speaker of the Assembly, and one
32 shall be appointed by the Senate Committee on Rules.

33 (b) The four members appointed by the Governor shall be
34 appointed, as follows:

35 (1) Three members shall have knowledge and expertise in the
36 operation of subsurface installations. Of those three members, one
37 shall have knowledge and expertise in the operation of the
38 subsurface installations of a municipal utility. At least one of the
39 three members shall have knowledge and experience in the
40 operation of high priority subsurface installations.

1 (2) One member shall have knowledge and expertise in
2 subsurface installation location and marking and shall not be under
3 the direct employment of an operator.

4 (c) The three members appointed by the Contractors' State
5 License Board shall have knowledge and experience in contract
6 excavation for employers who are not operators of subsurface
7 installations. Of the three members, one member shall be a general
8 engineering contractor, one member shall be a general building
9 contractor, and one member shall be a specialty contractor. For
10 the purposes of this section, the terms "general engineering
11 contractor," "general building contractor," and "specialty
12 contractor" shall have the meanings given in Article 4
13 (commencing with Section 7055) of Chapter 9 of Division 3 of
14 the Business and Professions Code.

15 (d) The member appointed by the Speaker of the Assembly shall
16 have knowledge and expertise in representing in safety matters
17 the workers employed by contract excavators.

18 (e) The member appointed by the Senate Committee on Rules
19 shall have knowledge and expertise in managing the underground
20 installations on one's own property, and may be drawn from
21 agricultural, commercial, or residential, or other, property sectors.

22 (f) The advisory committee may invite one director of operations
23 of a regional notification center to be a nonvoting ex officio
24 member of the advisory committee.

25 SEC. 14. Section 4216.14 is added to the Government Code,
26 to read:

27 4216.14. (a) The term of a member of the advisory committee
28 is two years. Of the first members of the advisory committee, four
29 members, determined by lot, shall serve for one year so that the
30 terms of the members shall be staggered.

31 (b) A member shall not be appointed for more than two
32 consecutive full terms.

33 (c) To the extent possible, the appointing power shall fill any
34 vacancy in the membership of the advisory committee within 60
35 days after the vacancy occurs.

36 (d) Upon the recommendation of the advisory committee, the
37 Governor may remove a member appointed by the Governor for
38 incompetence or misconduct.

1 (e) The advisory committee shall select a chairperson from
2 among its members at the first meeting of each calendar year or
3 when a vacancy in the chair exists.

4 (f) Subject to subdivision (g), the manner in which the
5 chairperson is selected and the chairperson's term of office shall
6 be determined by the advisory committee.

7 (g) A member of the advisory committee shall not serve more
8 than two consecutive years as the chairperson of the advisory
9 committee.

10 SEC. 15. Section 4216.15 is added to the Government Code,
11 to read:

12 4216.15. The advisory committee shall meet at least once every
13 three months. The advisory committee shall hold meetings in
14 Sacramento and Los Angeles, and in other locations in the state it
15 deems necessary.

16 SEC. 16. Section 4216.16 is added to the Government Code,
17 to read:

18 4216.16. The advisory committee may obtain funding for its
19 operational expenses from:

20 (a) The Safe Energy Infrastructure and Excavation Fund, created
21 in Section 320.5 of the Public Utilities Code.

22 (b) A federal or state grant.

23 (c) A fee charged to members of the regional notification centers
24 not to exceed the reasonable regulatory cost incident to enforcement
25 of this article.

26 (d) A filing or administrative fee to hear a complaint pursuant
27 to Section 4216.20.

28 (e) Any other source.

29 SEC. 17. Section 4216.17 is added to the Government Code,
30 to read:

31 4216.17. (a) In order to understand the needs for education
32 and outreach, including of those groups with the highest awareness
33 and education needs, such as homeowners, and to facilitate
34 discussion on how to coordinate those efforts, the advisory
35 committee shall annually convene a meeting with state and local
36 government agencies, California operators, regional notification
37 centers, and trade associations that fund outreach and education
38 programs that encourage safe excavation practices.

39 (b) The advisory committee shall use the annual meeting
40 described in subdivision (a) to determine the areas in which

1 additional education and outreach efforts should be targeted. The
2 advisory committee shall grant the use of the moneys that may be
3 apportioned to it by the Public Utilities Commission pursuant to
4 paragraph (1) of subdivision (b) of Section 320.5 of the Public
5 Utilities Code to fund public education and outreach programs
6 designed to promote excavation safety around subsurface
7 installations and target towards specific excavator groups, giving
8 priority to those with the highest awareness and education needs,
9 such as homeowners.

10 SEC. 18. Section 4216.18 is added to the Government Code,
11 to read:

12 4216.18. (a) The advisory committee shall develop a standard
13 or set of standards relevant to safety practices in excavating around
14 subsurface installations and procedures and guidance in
15 encouraging those practices. *When possible, standards should be*
16 *informed by public ly available data, such as that collected by*
17 *state and federal agencies and by the regional notification centers*
18 *pursuant to subdivision (d) of Section 4216.6, and the advisory*
19 *committee should refrain from using data about facility events not*
20 *provided either to a state or federal agency or as statewide*
21 *information, as defined in paragraph (2) of subdivision (e) of*
22 *Section 4216.6. The standard or set of standards are not intended*
23 *to replace other relevant standards, including the best practices of*
24 *the Common Ground Alliance, but are to inform areas currently*
25 *without established standards. The standard or set of standards*
26 *shall address all of the following:*

27 (1) Evidence necessary for excavators and operators to
28 demonstrate compliance with Sections 4216.2, 4216.3, and 4216.4.

29 (2) Guidance for recommended sanctions against excavators
30 and operators for violations of the article designed to improve
31 safety. Sanctions may include notification and information letters,
32 direction to attend relevant education, and financial penalties. The
33 guidance shall state the circumstances under which the
34 investigation and a recommendation for sanction shall be
35 transmitted to a state or local agency, which may include the
36 Attorney General or a district attorney, for enforcement pursuant
37 to subdivision (b) of Section 4216.20 and may allow for a decision
38 not to transmit if the investigation was initiated by a complaint,
39 the parties have settled the matter, and the advisory committee has
40 determined that further enforcement is not necessary as a deterrent

1 to maintain the integrity of subsurface installations and to protect
2 the safety of excavators and the public. Recommendations for
3 sanctions shall be graduated and shall consider all of the following:

- 4 (A) The type of violation and its gravity.
- 5 (B) The degree of culpability.
- 6 (C) The operator's or excavator's history of violations.
- 7 (D) The operator's or excavator's history of work conducted
8 without violations.
- 9 (E) The efforts taken by the violator to prevent violation, and,
10 once the violation occurred, the efforts taken to mitigate the safety
11 consequences of the violation.

12 *(F) That homeowners have high awareness and education needs,*
13 *and for this reason, financial penalties shall not be recommended*
14 *except in cases in which a person's violations have been willful,*
15 *repeated, and flagrant.*

16 (3) What constitutes reasonable care, as required by paragraph
17 (1) of subdivision (a) of Section 4216.4, in conducting deep
18 excavations within the tolerance zone, considering the need to
19 balance the protection of subsurface installations by the use of
20 hand tools within the tolerance zone with the safety concerns of
21 trench work.

22 (4) What constitutes reasonable care, as required by paragraph
23 (1) of subdivision (a) of Section 4216.4, in grading activities on
24 road shoulders and dirt roads which may include standards for
25 potholing.

26 (b) The advisory committee shall develop and recommend a
27 standard or set of standards requiring all new—~~subsurface~~
28 ~~installations~~, nonpressurized sewerlines, nonpressurized storm
29 drains, and other nonpressurized—~~lines~~ *drains that connect from*
30 *building structures to the public right-of-way* to include the
31 installation of tracer tape or wire to aid in detection and tracing of
32 these subsurface installations, nonpressurized sewerlines,
33 nonpressurized storm drains, and other nonpressurized—~~lines~~ *drains*
34 for adoption by the California Building Standards Commission as
35 mandatory building standards.

36 *(c) On or before December 31, 2017, the advisory committee*
37 *shall, in consultation with the Department of Food and Agriculture*
38 *and after an agricultural stakeholder process, make*
39 *recommendations for long term treatment of agricultural activities*
40 *that include determining whether the notification requirements of*

1 Section 4216.2, the locate and field mark requirements of Section
2 4216.3, and the excavation requirements of Section 4216.4 are
3 appropriate for all types of agricultural activities, or whether they
4 could be modified in ways to promote participation in safe
5 agricultural practices around high priority subsurface installations.

6 (1) The recommendations shall be informed by a study that
7 includes, but is not limited to, the following:

8 (A) A review of past damages attributable to agricultural
9 activities, including information provided by gas corporations
10 pursuant to subdivision (b) of Section 971 of the Public Utilities
11 Code.

12 (B) Estimations of the use of regional notification centers by
13 persons involved in agricultural activities provided by gas
14 corporations, including the methodology used for the development
15 of, the sources of error in, and confidence intervals for the
16 estimations, pursuant to subdivision (c) of Section 971 of the Public
17 Utilities Code.

18 (C) A review of the outreach and education practices of
19 operators of high priority subsurface installations toward persons
20 who undertake agricultural activities and measures of the successes
21 of those practices, with an explanation of how the measure of
22 success is defined.

23 (D) A review of existing standards for operator communication
24 with excavators, such as Recommended Practice 1162 by the
25 American Petroleum Institute.

26 (2) The recommendations shall address the following questions:

27 (A) Do agricultural activities differ from common types of
28 excavation in ways that may affect the applicability of Sections
29 4216.2, 4216.3, and 4216.4 to agricultural activities?

30 (B) Should a person notify the regional notification center before
31 undertaking agricultural activities that are not in the vicinity of
32 subsurface installations? What is a sufficient means by which a
33 person would know if there are subsurface installations in the
34 vicinity?

35 (C) What is the benefit of the requirement in subdivision (c) of
36 Section 4216.2 for an onsite meeting in advance of the performance
37 of agricultural activities in the vicinity of high priority subsurface
38 installations? Under what circumstances is an onsite meeting
39 appropriate in advance of the performance of agricultural
40 activities, and how far in advance of the performance of

1 *agricultural activities does the onsite meeting requirement retain*
2 *its benefit? What is the most convenient and expedient means to*
3 *initiate an onsite meeting in advance of the performance of*
4 *agricultural activities?*

5 *(D) What outreach and education activities on the part of*
6 *operators of high priority subsurface installations are important*
7 *to promote safety in performing agricultural activities? What*
8 *actions should the outreach and education activities induce in*
9 *persons performing agricultural activities, and how can success*
10 *be measured?*

11 *(E) How should the success of the advisory committee's*
12 *recommendations be measured?*

13 SEC. 19. Section 4216.19 is added to the Government Code,
14 to read:

15 4216.19. (a) The advisory committee shall investigate possible
16 violations of this article, including complaints from affected parties
17 and members of the public.

18 (b) In furthering the purposes of this article, the advisory
19 committee may authorize staff allocated to it by the Contractors'
20 State License Board to use compliance audits, including field
21 audits, and investigations of incidents and near-misses.

22 (c) This section shall become operative on January 1, 2017.

23 SEC. 20. Section 4216.20 is added to the Government Code,
24 to read:

25 4216.20. (a) Upon the completion of an investigation of a
26 possible violation of this article, the advisory committee shall
27 inform the following parties of the result of the investigation,
28 including any findings of probable violation:

29 (1) The party or parties whose activities were the subject of the
30 investigation.

31 (2) The complainant, if the investigation was initiated because
32 of a complaint.

33 (3) Any excavator or operator whose activities or subsurface
34 installations were involved in the incident investigated.

35 (b) If the advisory committee, upon the completion of an
36 investigation, finds a probable violation of the article, the advisory
37 committee may transmit the investigation results and any
38 recommended penalty to the state or local agency with jurisdiction
39 over the activity or business undertaken in commission of the
40 violation.

1 SEC. 21. Section 4216.21 is added to the Government Code,
2 to read:

3 4216.21. (a) For an investigation that the advisory committee
4 undertakes as a result of a complaint of a violation of Sections
5 4216.2, 4216.3, or 4216.4, the complainant shall not file an action
6 in court for damages based on those violations until the
7 investigation is complete, or for 120 days after the investigation
8 begins, whichever comes first, during which time, applicable
9 statutes of limitation shall be tolled.

10 (b) If a complainant files an action in court against a person for
11 damages based upon violations of Sections 4216.2, 4216.3, or
12 4216.4, after the completion of an advisory committee investigation
13 in which the person was found not to have violated the article, the
14 complainant shall also notify the advisory committee when the
15 action is filed.

16 (c) This section only applies to a claim for damages to a
17 subsurface installation.

18 SEC. 22. Section 4216.22 is added to the Government Code,
19 to read:

20 4216.22. (a) Notwithstanding Section 10231.5, the advisory
21 committee shall report to the Governor and the Legislature on or
22 before February 1, 2017, and each year thereafter, on the activities
23 of the advisory committee and any recommendations of the
24 advisory committee.

25 (b) A report to be submitted pursuant to subdivision (a) shall
26 be submitted in compliance with Section 9795.

27 SEC. 23. Section 320.5 is added to the Public Utilities Code,
28 to read:

29 320.5. (a) The Safe Energy Infrastructure and Excavation Fund
30 is hereby established in the State Treasury. Moneys deposited into
31 the fund shall be used to cover the administrative expenses of the
32 California Underground Facilities Safe Excavation Advisory
33 Committee, upon appropriation by the Legislature. Additionally,
34 the moneys may be used as described in subdivision (b).

35 (b) Up to five hundred thousand dollars (\$500,000) of moneys
36 in the fund that are in excess of the moneys necessary for the
37 administrative expenses of the California Underground Facilities
38 Safe Excavation Advisory Committee may, upon appropriation
39 by the Legislature, be apportioned by the commission for the
40 following purposes:

(1) The California Underground Facilities Safe Excavation Advisory Committee, to fund public education and outreach programs designed to promote excavation safety around subsurface installations and targeted toward specific excavator groups.

(2) The commission, to further a workforce development program, which shall be consistent with its equal employment opportunity program, that recruits and trains safety staff to perform the highest quality gas and electric utility inspections, audits, accident investigations, and data tracking and analysis. Moneys used for training purposes may not be used to fulfill existing federal or state training requirements but, instead, shall only be used for training in addition to those requirements. The commission may only apportion moneys for this purpose upon commission approval of the workforce development program at a meeting of the commission. No more than one hundred fifty thousand dollars (\$150,000) of the Safe Energy Infrastructure and Excavation Fund may be used for this purpose.

(c) Any moneys not allocated pursuant to subdivisions (a) and (b) shall be deposited into the General Fund.

SEC. 24. Section 911.2 is added to the Public Utilities Code, to read:

911.2. No later than February 1, 2019, the commission shall report to the Legislature and to the California Underground Facilities Safe Excavation Advisory Committee an analysis of excavation damage to commission-regulated pipeline facilities. The report shall include analyses of the types of damage and other information described in Section 971.

~~SEC. 24.~~

SEC. 25. Section 971 is added to the Public Utilities Code, to read:

971. (a) As a part of its damage prevention program carried out pursuant to Section 192.614 of Part 192 of Title 49 of the Code of Federal Regulations, each gas corporation shall collect data to inform its outreach activities. ~~The~~ Until January 1, 2020, the data shall include all of the following:

(1) ~~Damages~~-Damage to underground commission-regulated pipeline facilities that occurred during the performance of landscaping activities. Each gas corporation shall note in its investigation of excavation damage incidents the approximate depth of the gas facility at the time of damage, the type of excavator

involved, which may include “homeowner,” “licensed contractor,” or “unlicensed contractor,” and whether the excavator had called the regional notification center before performing the excavation. ~~This paragraph shall become inoperative on January 1, 2020.~~

(2) All claims filed by the gas corporation against an excavator for damage to commission-regulated pipeline facilities.

(3) Damages to underground commission-regulated pipeline facilities that occurred in the installation of temporary real estate signposts. Each gas corporation shall note in its investigation of excavation damage incidents the type of signpost installed and the method of installation, including the types of tools used.

(4) Damage to underground commission-regulated pipeline facilities that occurred during agricultural activities, including the type of activity performed and the type of tool involved in the damage.

~~(4)~~

(5) Any other information that the commission shall require.

~~(b) Each~~ *Until January 1, 2020, each* gas corporation shall annually report to the commission *and to the California Underground Facilities Safe Excavation Advisory Committee* excavation damage data and analyses *contained in subdivision (a)* in a format of the commission’s choosing.

~~(c) No later than February 1, 2019, the commission shall report to the Legislature an analysis of excavation damages to commission-regulated pipeline facilities. The report shall include analyses of the types of damages and other information described in subdivision (a).~~

(c) As a part of its damage prevention program carried out pursuant to Section 192.614 of Part 192 of Title 49 of the Code of Federal Regulations, each gas corporation shall estimate Californians’ use of regional notification centers, as defined in Section 4216 of the Government Code, before conducting agricultural activities. This estimation shall consider the use of regional notification centers before conducting agricultural activities that are both in the vicinity of its natural gas transmission pipelines and not in the vicinity of its natural gas transmission pipelines. Each gas corporation shall provide this estimate to the commission and to the California Underground Facilities Safe Excavation Advisory Committee on or before July 1, 2016. In

1 *performing this estimation, each gas corporation shall do all of*
2 *the following:*

3 *(1) Estimate the amount and locations of agricultural activity*
4 *being performed by using relevant publically available information,*
5 *such as maps prepared pursuant to the Farmland Mapping and*
6 *Monitoring Program of the California Natural Resources Agency,*
7 *information from the National Agricultural Statistics Service, and*
8 *information available from assessor parcel numbers.*

9 *(2) Determine the number and locations of notifications to*
10 *regional notification centers for excavation activities on*
11 *agricultural land by using information from its own mark and*
12 *locate activities and, to the extent the information is available,*
13 *from the regional notification centers or other sources.*

14 *(3) For notifications in the vicinity of its natural gas*
15 *transmission pipelines, determine the average number of*
16 *notifications on agricultural land per transmission pipeline mile*
17 *per year as well as a histogram to describe the number of*
18 *transmission pipeline intervals Y, in units of the best available*
19 *precision, on which X notifications occurred, where X increases*
20 *from zero.*

21 *(4) Describe the methodology used for the development of any*
22 *estimates and identify sources of error in the estimation and a*
23 *confidence interval for the estimation.*

24 ~~SEC. 25.~~

25 *SEC. 26.* Section 1702.5 of the Public Utilities Code is amended
26 to read:

27 1702.5. (a) The commission shall, in an existing or new
28 proceeding, develop and implement a safety enforcement program
29 applicable to gas corporations and electrical corporations that
30 includes procedures for monitoring, data tracking and analysis,
31 and investigations, as well as issuance of citations by commission
32 staff, under the direction of the executive director. The enforcement
33 program shall be designed to improve gas and electrical system
34 safety through the enforcement of applicable law, or order or rule
35 of the commission related to safety using a variety of enforcement
36 mechanisms, including the issuance of corrective actions, orders,
37 and citations by designated commission staff, and recommendations
38 for action made to the commission by designated commission staff.

39 (1) When considering the issuance of citations and assessment
40 of penalties, the commission staff shall take into account voluntary

1 reporting of potential violations, voluntary removal or resolution
2 efforts undertaken, the prior history of violations, the gravity of
3 the violation, and the degree of culpability.

4 (2) The procedures shall include, but are not limited to,
5 providing notice of violation within a reasonable period of time
6 after the discovery of the violation.

7 (3) The commission shall adopt an administrative limit on the
8 amount of monetary penalty that may be set by commission staff.

9 (b) The commission shall develop and implement an appeals
10 process to govern the issuance and appeal of citations or resolution
11 of corrective action orders issued by the commission staff. The
12 appeals process shall provide the respondent a reasonable period
13 of time, upon receiving a citation, to file a notice of appeal, shall
14 afford an opportunity for a hearing, and shall require the hearing
15 officer to expeditiously provide a draft disposition.

16 (c) The commission shall, within a reasonable time set by the
17 commission, conclude a safety enforcement action with a finding
18 of violation, a corrective action order, a citation, a determination
19 of no violation, approval of the corrective actions undertaken by
20 the gas corporation or electrical corporation, or other action. The
21 commission may institute a formal proceeding regarding the alleged
22 violation, potentially resulting in additional enforcement action,
23 regardless of any enforcement action taken at the commission staff
24 level.

25 (d) The commission shall implement the safety enforcement
26 program for gas safety by July 1, 2014, and implement the safety
27 enforcement program for electrical safety no later than January 1,
28 2015.

29 (e) This section does not apply to an exempt wholesale
30 generator, a qualifying small power producer, or qualifying
31 cogenerator, as defined in Section 796 of Title 16 of the United
32 States Code and the regulations enacted pursuant thereto. Nothing
33 in this section affects the commission's authority pursuant to
34 Section 761.3.

35 (f) Notwithstanding any other law, moneys collected as a result
36 of the issuance of citations pursuant to this section shall be
37 deposited in the Safe Energy Infrastructure and Excavation Fund.

38 ~~SEC. 26.~~

39 *SEC. 27.* No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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